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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/624,473	07/23/2003	Ralph R. Mehr	1062/5	7421

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Discovery Dispatch

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EXAMINER

NGUYEN, DINH Q

ART UNIT

PAPER NUMBER

3752

DATE MAILED: 06/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/624,473

Applicant(s)

MEHR, RALPH R.

Examiner

Dinh Q. Nguyen

Art Unit

3752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 3-5, 14, 18 and 19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 6-13, 15-17 and 20-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Claims 3-5 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 4/04/05. However, Claims 14, 18 and 19 read on Species II of figures 2a and 2b, and do not read on the elected Species III of figures 3a and 3b. The restriction requirement is still deemed proper and is therefore made Final.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the damping mechanism with a piston and a spring as claimed in claims 10-12 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering

of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required:

In claim 6, line 1, "a variable orifice insert"; lines 3 and 4, "a flow-impeding element"; line 5, "a water flow path".

In claim 7, line 2, "a specific flow path".

In claims 10 and 17, "a damping mechanism".

In claim 11, line 2, "a piston".

In claim 12, line 2, "a spring".

In claim 16, line 2, "an inner wall of a deflector of the sprinkler".

In claims 20 and 21, "one leaf".

In claim 22, line 2, "leaves".

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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5. Claims 1, 2, 6-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 6, line 1, "a variable orifice insert"; lines 3 and 4, "a flow-impeding element"; line 5, "a water flow path".

In claim 7, line 2, "a specific flow path".

In claims 10 and 17, "a damping mechanism".

In claim 11, line 2, "a piston".

In claim 12, line 2, "a spring".

In claim 16, line 2, "an inner wall of a deflector of the sprinkler".

In claims 20 and 21, "one leaf".

In claim 22, line 2, "leaves".

6. For the purpose of this Office action, the claims will be examined as best understood by the examiner.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1, 2, 6-10, 13, 15-17, 20 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Pieczykolan as best understood.

Pieczykolan discloses an automatic sprinkler 10 having a variable orifice 52, the flow rate of this sprinkler satisfying the formula $Q=K*(p)^{1/2}$, the sprinkler also has an insert 18 with flexible diaphragm 19, the insert 18 acting as a damping mechanism for flowing of fluid through the orifice 52 as shown in closed position of figure 1 and open position in figure 4, the pressure of the fluid will vary the opening of projections 66. The insert is being anchored in the inner wall of the sprinkler by upper and lower flanges 21 and 22.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pieczykolan in view of Howat.

Pieczykolan teaches all the limitations of the claims except for a plurality of leaves of the flow-impeding element. However, Howat discloses a flow-impeding element 20 with a plurality of leaves 24 (see figures 1 and 3). Therefore, it would have been obvious to one having ordinary skill in the art to have provided the device of Pieczykolan with a plurality of leaves flow-impeding element as suggested by Howat. Doing so would provide a way to control flowing of fluid.

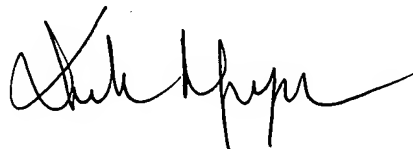
Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patents are cited to show the art with respect to a flow-impending element: Lemmer, and Livingston.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dinh Q. Nguyen whose telephone number is 571-272-4907. The examiner can normally be reached on Monday-Thursday 6:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Scherbel can be reached on 571-272-4919. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Dinh Q. Nguyen
Primary Examiner
Art Unit 3752